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THE HONORABLE FRED VAN SICKLE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

JAMES S. GORDON, JR, Plaintiff, v. IMPULSE MARKETING GROUP, INC., Defendant IMPULSE MARKETING GROUP, INC., Third Party Plaintiff v. BONNIE GORDON, JAMES S. GORDON, III, JONATHAN GORDON, JAMILA GORDON, ROBERT PRITCHETT, EMILY ABBEY Third Party Defendants	NO. CV-04-5125-FVS MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR AUTHORITY TO RESPOND TO PLAINTIFF'S STATEMENT OF MATERIAL FACT AND FOR RESCHEDULING OF TELEPHONIC ARGUMENT Jury Trial Demanded

COMES NOW the Plaintiff, James S. Gordon, Jr., and hereby opposes Defendant's "Motion For Authority To Respond To Plaintiff's Statement Of Material Fact And For Rescheduling Of Telephonic Argument."

The Plaintiff notes at the outset that the factual record before the Court is very limited. The declarations of James S. Gordon, Jr., the declaration of Eric Castelli, the declaration of James A. Bodie, and the declaration of Mr. Philip Huston form the entire factual basis for each of the respective parties' contentions before the court. Cumulatively, this entire record is less than 30 pages, excluding exhibits. Accordingly, it may be the case that the Court is comfortable deciding the motion before it without considering any statement of facts under LR 56.1. If so, the Plaintiff hereby offers to strike its LR 56.1(c) Statement of Facts filed with the Court September 30, 2005 if, and only if, the Court will allow the matter to be heard October 12, 2005, as it is now scheduled. In the alternative, the Plaintiff notes that the Defendant will have every opportunity to argue the facts any way it sees fit at the hearing on October 12th, and therefore objects to the Defendant's motion to, yet again, delay the Court from hearing this motion.

The Plaintiff concedes that the Plaintiff's motion, filed August 17, 2005, did not include a statement of facts as set forth in LR 56.1(a). The Defendant could

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have filed a motion to strike the Plaintiff's motion on that basis. But the Plaintiff's failure to file a statement in no way prevented the Defendant from filing its own statement of facts under LR 56.1(b). The Defendant simply chose not to do so. Instead, the Defendant waited until the very last minute, a mere TWO DAYS before the motion is to be heard, and has now asked the Court for more time. The Court should deny this dilatory tactic.

The Defendant has had ample opportunity to file its statement of facts with the Court. It has been almost two months since the Plaintiff filed its original motion. At any time during those two months, the Defendant could have filed a statement of facts or a motion to strike. Indeed, during this time, the Defendant *did* file a motion to strike which resulted in the motion being moved back two additional weeks. However, Defendant's motion to strike failed to raise any issue regarding the Plaintiff's compliance with LR 56.1, and therefore the objection was arguably waived.

During this time period the Defendant also filed an "amended" answer, two motions to shorten time, and a motion to set the motion for telephonic argument. The Defendant should have raised their objection concurrently with any or all of these filings, and could have filed its own statement of facts at any time during this

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period. The Defendant has only itself to blame for the fact that it has not, even now, done so.

CONCLUSION

The Plaintiff respectfully requests that the Court deny the Defendant's request for authority and rescheduling.

DATED this 6th day of October, 2005

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Certificate of Service

I hereby certify that on October 6, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Floyd Ivey, Peter J. Glantz. I hereby certify that I have served the forgoing to the following non-CM/ECF participants by other means: Bonnie Gordon, Jonathan Gordon, James S. Gordon, III, and Robert Prichett. I hereby certify that I have served the forgoing to the following persons who are non-CM/ECF participants named in this lawsuit, but who have not yet been served or entered an appearance in this lawsuit by other means: Emily Abbey and Jamila Gordon.

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